

123 FERC ¶ 61,142
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System Operator, Inc. and The Transmission Owners of the Midwest Independent Transmission System Operator, Inc. Docket No. ER08-664-000

ORDER ACCEPTING PROPOSED REVISIONS TO MIDWEST ISO
TRANSMISSION OWNERS AGREEMENT FOR FILING

(Issued May 12, 2008)

1. On March 13, 2008, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners (the Midwest ISO TOs)¹ submitted to the Commission for filing, pursuant to section 205 of the Federal Power Act

¹ The Midwest ISO states that it joins the filing exclusively in its administrative capacity and takes no position on the substantive revisions filed. Therefore, we will refer in this order to the Midwest ISO TOs as the filing parties. For purposes of this filing, the Midwest ISO TOs include: Ameren Services Company, as agent for Union Electric Company (Union Electric), Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC; American Transmission Systems, Inc., a subsidiary of FirstEnergy Corp.; City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest, LLC (ITC Midwest); Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy, Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation; Southern Illinois Power Cooperative; Southern Minnesota Municipal Power Agency; Southern Indiana Gas & Electric Company; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

(FPA),² proposed revisions to Appendix C, section III.B of the Midwest ISO Transmission Owners Agreement (TO Agreement).³ The proposed revisions would allow the Midwest ISO to continue using the transition-period revenue distribution methodology in the TO Agreement beyond the end of the transition period. As discussed below, we accept the proposed revisions.

I. Background

A. Treatment of Bundled Retail Load and Revenue Distribution in the Transition Period

1. TO Agreement

2. The TO Agreement sets forth the rules governing the relationship between the Midwest ISO and the Midwest ISO TOs.⁴ Appendix C of the TO Agreement (Pricing and Revenue Distribution, Return of Start-Up Costs, and Renegotiation Procedures for Grandfathered Agreements) addresses certain transmission pricing and revenue distribution matters. In particular, the TO Agreement establishes two revenue distribution methodologies – one applicable during the six year transition period ending January 31, 2008 and the second applicable after the end of the transition period.

3. During the transition period, the TO Agreement states that the revenue that the Midwest ISO collects under the Midwest ISO's Open Access and Energy Markets Tariff (TEMT) for Network Integration Transmission Service (Network Service) or Point-to-Point Transmission Service (PTP Service) that is used to serve load within the Midwest ISO is distributed to the Midwest ISO TO whose facilities comprise the license-plate pricing zone where the applicable load is located.⁵

² 16 U.S.C. § 824d (2000 & Supp. V 2005).

³ Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, Midwest ISO, FERC Electric Tariff, First Revised Rate Schedule No. 1.

⁴ While we refer generally to the Midwest ISO TOs herein, references to the Midwest ISO TOs assume that they were as constituted for the purposes of the relevant documents and dockets discussed.

⁵ The TO Agreement also requires that revenue associated with through-and-out transactions be distributed during the transition period pursuant to a revenue sharing formula. In addition, Midwest ISO does not collect or distribute any revenue for transmission service that transmission owners take under the TEMT to meet their obligations under Grandfathered Agreements (GFAs). TO Agreement, App. C at § III.A.

2. TEMT

4. The Midwest ISO distributes the revenue it collects for TEMT service in accordance with the transition period revenue distribution methodology in the TO Agreement. However, although transmission owners must take service under the TEMT for all uses of the Midwest ISO transmission system, the TEMT exempts transmission owners from the Network Service license-plate zonal transmission charges in the TEMT for service transmission owners take to serve their bundled retail load.⁶ Instead, the Network Service charges are deemed paid by and distributed directly to the Midwest ISO TOs without passing through the Midwest ISO billing and settlement process and Funds Trust Agreement (i.e., the Midwest ISO does not collect or distribute revenue associated with service associated with bundled retail load).⁷

B. Revenue Distribution in the Post-Transition Period

1. TO Agreement

5. After the transition period expires on January 31, 2008, the TO Agreement sets forth that “[e]ach [Midwest ISO TO] shall receive revenues, on a monthly basis, based on

⁶ These provisions in the TEMT implement requirements in the TO Agreement. *See, id.*, App C at § II. As originally accepted by the Commission in 1998, Midwest ISO TOs would have continued to provide themselves Network Service over their own facilities to serve their bundled retail load (and to meet their GFA obligations). However, in 2001, the Commission in Opinion No. 453 required Midwest ISO TOs to take transmission service under the Midwest ISO Open Access Transmission Tariff (the predecessor to the TEMT) for all use of the Midwest ISO transmission system to serve their bundled retail load and GFA customers, in order for the Midwest ISO to satisfy Order No. 2000’s requirement that a regional transmission organization be the sole provider of transmission service over the facilities under its control. *See Midwest Indep. Transmission Sys. Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033, at 61,170 (2001), *order on reh’g*, Opinion No. 453-A, 98 FERC ¶ 61,141, at 61,411 (2002), *order on voluntary remand*, 102 FERC ¶ 61,192, *order on reh’g*, 104 FERC ¶ 61,012 (2003), *aff’d sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004); *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,089 (1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,092 (2000), *aff’d sub nom. Public Utility District. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

⁷ *See* Midwest ISO’s transmittal letter, Docket No. ER08-522-000 at 2, n.8 (February 1, 2008).

its revenue requirement calculated in accordance with a formula filed with the FERC,” and any shortfall or excess in the revenues available for distribution in any year shall be “apportioned on a proportionate basis of revenue requirements. . . .”⁸

2. TEMT Filing, Docket No. ER08-296-000

6. On December 3, 2007, in Docket No. ER08-296-000, the Midwest ISO and certain Midwest ISO TOs proposed changes to the TEMT to accommodate the revenue distribution change in the TO Agreement that would become effective when the transition period ended (TEMT Filing). As described more fully in the Commission order conditionally accepting the proposed changes to the TEMT,⁹ the Midwest ISO and the Midwest ISO TOs maintained that if the Midwest ISO continued to exempt bundled retail load from Network Service charges after the transition period, the revenues collected by the Midwest ISO would be insufficient to cover the combined revenue requirements of all of the Midwest ISO TOs. In addition, they asserted that the change in revenue distribution under the TO Agreement beginning February 1, 2008 would create unfair and unacceptable cross-subsidies among the Midwest ISO TOs because the proportion of zonal load representing bundled retail load varies among the Midwest ISO TOs (i.e., service to retail customers of some Midwest ISO TOs, but not others, has been unbundled).

7. The Midwest ISO claimed that the problem could be resolved by modifying either the TO Agreement or the TEMT. Although a majority of the Midwest ISO TOs voted for a motion to amend the TO Agreement, the motion failed because the revenue distribution provisions of the TO Agreement require a unanimous vote for modification.¹⁰ However, only a majority vote of the Midwest ISO TOs is necessary to propose changes to the TEMT, and with the majority’s approval, the Midwest ISO and certain of the Midwest ISO TOs submitted the TEMT Filing.

8. The Commission conditionally accepted the TEMT Filing in the February 1 Order and determined that the proposed tariff revisions were just and reasonable, as modified in

⁸ TO Agreement, App. C at § III.B.

⁹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,090, at P 44, 47 (2008) (February 1 Order), *reh’g pending*.

¹⁰ The TO Agreement provides that “[t]he distribution of transmission service revenues collected by the Midwest ISO and the methodology for determining such distribution, as set forth in Appendix C to this Agreement, and the return of start-up costs, provided for in Appendix C to this Agreement, also shall not be changed except by unanimous vote of the Owners.” TO Agreement, Art. II at § IX.C.6 (Revenue distribution and methodology and return of start-up costs).

a compliance filing.¹¹ The Commission ordered the Midwest ISO to file a compliance filing with further revisions to the TEMT so that grandfathered agreements were treated comparably under the proposed changes.

3. Continuing Proceedings in Docket No. ER08-296

9. On March 3, 2008, in Docket No. ER08-296-001, Union Electric filed a request for rehearing of the Commission's February 1 Order. Union Electric's rehearing request is currently pending before the Commission. Also on March 3, 2008, in Docket No. ER08-296-002, the Midwest ISO submitted the compliance filing required by the Commission in the February 1 Order.

4. Interim TO Agreement Filing, Docket No. ER08-522-000

10. In part because of the ongoing proceedings in Docket No. ER08-296, the Midwest ISO and certain Midwest ISO TOs determined that they were going to need additional time, past the January 31, 2008 termination date of the transition period, to develop a post-transition period revenue distribution methodology. Therefore, they submitted an unopposed request in Docket No. ER08-522-000 to continue using the transition-period revenue distribution methodology, as provided in Appendix C, section III.A of the TO Agreement, on an interim basis, subject to a future filing proposing a final post-transition revenue methodology. The Commission approved the request.¹²

II. Proposed Revisions to the TO Agreement, Docket No. ER08-664-000

11. Here, the Midwest ISO TOs propose to revise Appendix C, section III.B of the TO Agreement to extend indefinitely the section III.A revenue distribution provisions that were applicable during the transition period. The Midwest ISO TOs state that they voted unanimously to submit the proposed change to the TO Agreement. The result of the proposed revisions would be that the revenue distribution methodology applicable to Schedules 7, 8 and 9 of the TEMT that has been in effect since the Midwest ISO began service would continue to be used beyond the end of the transition period. The Midwest ISO TOs propose to maintain the transition period revenue distribution methodology by deleting the provisions of section III.B of Appendix C and replacing them with a provision providing for the continued application of the revenue distribution provisions in section III.A of Appendix C after the end of the transition period.

12. The Midwest ISO TOs state that the post-transition revenue distribution methodology that they propose to eliminate was drafted in sufficiently broad language to

¹¹ February 1 Order, 122 FERC ¶ 61,090 at P 44, 47.

¹² See *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER08-522-000 (March 13, 2008) (unpublished letter order).

permit, but not require, a greater level of regional revenue sharing to the extent that some form of Midwest ISO-wide rates were implemented at the end of the transition period. However, the Commission recently accepted the Midwest ISO's proposal to continue the existing zonal license-plate rate design that was in effect during the transition period.¹³ The Midwest ISO states that, therefore, there is no need to change the revenue distribution methodology at this time to accommodate a new rate design.

13. The Midwest ISO TOs request an effective date of February 1, 2008 for the proposed revisions. The Midwest ISO TOs note that they have already been using the existing revenue distribution methodology on an interim basis, as accepted in Docket No. ER08-522-000. Therefore, if the Commission approves a February 1, 2008 effective date in the instant filing, there would be no need for the Midwest ISO to make any retroactive adjustment to the revenue distribution it has made since February 2008.

14. In addition, the Midwest ISO TOs state that the changes to the TEMT that the Commission conditionally approved in the February 1 Order (in Docket No. ER08-296) were necessary to accommodate the existing post-transition revenue distribution methodology in the TO Agreement that they are proposing to change in the instant filing. The Midwest ISO TOs state that they are not filing to withdrawal the TEMT changes proposed in Docket No. ER08-296 at this time.¹⁴

III. Notice of Filing and Responsive Pleadings

15. Notice of the Midwest ISO TOs' filing was published in the *Federal Register*, 73 Fed. Reg. 16,002 (2008), with motions to intervene and protests due on or before April 3, 2008. Integrys Energy Group (Integrys) filed a timely motion to intervene, comments, and motion to consolidate the instant proceeding with the compliance filing in Docket No. ER08-296-002. Timely motions to intervene were filed by Consumers Energy Company and jointly by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.

16. On April 8, 2008, Union Electric filed an answer to Integrys' motion to consolidate. On April 8, 2008, the Midwest ISO TOs filed a limited answer to Integrys' comments and motion to consolidate.

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081, at P 138 (2008) (January 31 Order).

¹⁴ The Midwest ISO TOs' March 13, 2008 transmittal letter at 3, n.5.

IV. Discussion

A. Procedural Matters

1. Motions to Intervene and Answers

17. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

18. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest, unless otherwise ordered by the decisional authority.¹⁵ We will accept the answers submitted by Union Electric and the Midwest ISO TOs because they have aided us in our decision-making process.

2. Motion to Consolidate

a. Integrys Comments

19. Integrys argues that Docket Nos. ER08-296-000 and ER08-664-000 should be consolidated and that the tariff revisions at issue in Docket No. ER08-296 should be withdrawn or otherwise terminated. Integrys notes that the Docket No. ER08-296-000 proceedings are at a later stage than the Docket No. ER08-664-000 proceeding, but it believes that consolidation is appropriate because both dockets concern the same subject matter and the proposed revisions to the TO Agreement are superior to the tariff revisions at issue in Docket No. ER08-296.¹⁶ In addition, Integrys argues that a single order applicable to both dockets would conserve resources and provide an opportunity for reasoned consideration of the filings in each docket. Integrys adds that consolidation would not result in material delay of the proceedings in Docket No. ER08-296 since a further order in that docket would be issued at approximately the same time as the Commission order in Docket No. ER08-664-000.

¹⁵ 18 C.F.R. § 385.213(a)(2) (2007).

¹⁶ Integrys argues that the revision to section 37.3 of the TEMT in Docket No. ER08-296 served a useful purpose when there was no TO unanimity on amending the TO Agreement. Now that unanimity has been achieved and the amendment to the TO Agreement has been filed (in the instant proceeding), Integrys asserts that the revisions to section 37.3 of the TEMT do not appear to serve a useful purpose. It also argues that the existence of two provisions, one in the TEMT and one in the TO Agreement, each dealing with the same subject matter, is undesirable. Integrys argues, therefore, that the proposed revisions to the TO Agreement should be allowed to become effective and the revisions to section 37.3 of the TEMT should be terminated.

b. Answers

20. Union Electric opposes consolidation of the two dockets. Union Electric argues that although the general subject matter of the filings may be the same, the filings propose different changes to different governing documents and are not redundant. In addition, Union Electric argues that the two proceedings are at different procedural stages and would be adversely affected by consolidation, contrary to Integrys' assertion. Union Electric notes that the changes to the TEMT have already been conditionally approved by the Commission and are pending before the Commission only on the limited issues raised by Union Electric in its request for rehearing of the February 1 Order¹⁷ and on the adequacy of the compliance filing in that proceeding. Union Electric states that if Integrys wishes to remove the accepted provisions from the TEMT now, it must initiate a new section 205 proceeding with the appropriate burden of proof. Furthermore, Union Electric argues that because the deadlines for comments in the instant proceeding and the TEMT compliance proceeding, and for requests for rehearing of the February 1, 2008 order, have all passed, consolidation of the proceedings would be unfair because parties would not have the opportunity to submit any comments on the relative treatment of the two proceedings.

21. The Midwest ISO TOs also oppose consolidation of the two proceedings. The Midwest ISO TOs state that although they agree with Integrys that there may be some level of interrelatedness, the two proceedings technically address different issues; the TEMT revisions filed in the Docket No. ER08-296 proceedings define the revenues that are subject to distribution by the Midwest ISO whereas the TO Agreement revisions filed in Docket No. ER08-664-000 define how such revenue distribution is to occur. In addition, the Midwest ISO TOs state that they do not believe that consolidation will promote administrative efficiency since both dockets are ripe for Commission action, despite being at different procedural stages.

c. Commission Determination

22. We deny Integrys' motion to consolidate Docket No. ER08-664-000 with Docket No. ER08-296. Generally, the Commission consolidates cases where there are common issues of law and fact for purposes of settlement, hearing and decision. However, here, as discussed below, we are accepting the proposed revisions to the TO Agreement for filing without further proceedings. Consequently, there is no further proceeding to consolidate with Docket No. ER08-296, and consolidation would serve no purpose. Further, with regard to Integrys' request to terminate the revisions to section 37.3 of the TEMT at issue in Docket No. ER08-296, we note that Integrys also filed its request for

¹⁷ Union Electric states that it is not withdrawing its request for rehearing of the February 1 Order.

termination in Docket No. ER08-296 and that it is a party to that proceeding. The Commission will address the merits of Integrys' request in Docket No. ER08-296 by separate order in that proceeding.

B. Substantive Matters

23. As discussed below, we will accept the Midwest ISO TOs' proposed revisions to the TO Agreement and grant waiver of the Commission's prior notice requirement¹⁸ to allow the proposed revisions to be effective February 1, 2008, as requested. No adverse comments or protests to the filing were submitted, and the only comments received address the motion to consolidate, as discussed above.

24. The Midwest ISO TOs' proposed revisions to Appendix C, section III.B of the TO Agreement, which extend indefinitely the section III.A transition period revenue distribution provisions, are just, reasonable, and not unduly discriminatory or preferential. As the Midwest ISO TOs explain, the original post-transition period revenue distribution provisions were written to accommodate a greater level of regional revenue sharing in anticipation that postage stamp rates might be implemented at the end of the transition period. However, as noted above, in the January 31 Order, the Commission approved the continued use of the zonal license plate rate design that was in effect during the transition period.¹⁹ With the retention of license plate rates in the post-transition period, it is reasonable to also retain the revenue distribution methodology applicable during the transition period.

25. In addition, the Midwest ISO TOs voted unanimously to approve the revisions to Appendix C. As noted above, the revenue distribution provisions of the TO Agreement require a unanimous vote for modification.

26. The Midwest ISO TOs state that support of this filing shall not prejudice the rights of any transmission owner to take any position or pursue further action with regard to any order issued by the Commission in Docket No. ER08-296, including its subdockets. In addition, the motion that received the unanimous approval necessary to make the instant filing states that "the effectiveness of this motion and any filing to continue the transition period revenue distribution methodology as detailed herein is subject to any order issued by FERC in FERC Docket No. ER08-296-000 after February 25, 2008."²⁰ This is consistent with our rejection of the request to consolidate ER08-296 with the instant proceeding.

¹⁸ 18 C.F.R. § 35.3 (2007).

¹⁹ January 31 Order, 122 FERC ¶ 61,081 at P 138.

²⁰ See The Midwest ISO TOs' March 13, 2008 filing at Attachment C.

The Commission orders:

(A) The Midwest ISO TOs' proposed revisions to the TO Agreement are hereby accepted for filing, effective February 1, 2008, as discussed in the body of this order.

(B) The request for consolidation is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.